



various times over the course of this proceeding at the same location at Mount Lukens in Los Angeles County, on the same frequency, 853.8875 MHz.<sup>7</sup>

3. In November 1994, Matson Development Corporation (Matson), the predecessor-in-interest to Lone Star Radio, Inc. (Lone Star), entered into an agreement with Glendale's General Manager, Paul Northup, apparently acting on behalf of Glendale, to assign Stations WNGQ365 and WNHN211 from Glendale to Matson (1994 Agreement).<sup>8</sup> Pursuant to the Agreement, the license for Station WNHN211 was to be assigned to Matson and then to the LAPD.<sup>9</sup> On February 20, 1996, the LAPD was granted a license, now KGE571, which includes the Mount Lukens site originally licensed on a primary basis to Station WNHN211. We, however, have no record that any assignment application for Station WNGQ365 from Glendale to Lone Star was ever filed or granted.<sup>10</sup> Reasoning that operations for the station had been discontinued since November 1995, Lone Star decided not to submit the assignment application intending to allow Glendale's license for Station WNGQ365 to expire on its scheduled expiration date, June 8, 1998.<sup>11</sup> Because Lone Star chose not to file an assignment application, Glendale remained the licensee of record in the Commission's database for Station WNGQ365.

4. In July 1997, because of Mr. Kohli's declining health, Ms. Frumeh Labow was appointed Conservator of his estate.<sup>12</sup> According to GEI, Ms. Labow was unaware of the license for Station WNGQ365 until she received an automated renewal reminder in May 1998.<sup>13</sup> That same month, in response to the renewal notice, Ms. Labow filed a renewal application for the station. The Licensing Branch had no information at that time that the station had discontinued operations and therefore granted the uncontested renewal application on June 8, 1998, for a ten-year term. In July 1998, the Superior Court of Los Angeles County created the Kohli Family Trust and appointed A. Verne Tjarks as Trustee, who incorporated Glendale Electronics as Glendale Electronics, Inc. (GEI).<sup>14</sup> In January 2000, Tjarks, who states that he had no knowledge of the 1994 Agreement, submitted an application seeking the assignment of the license for WNGQ365 from Glendale Electronics to GEI.<sup>15</sup>

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<sup>7</sup> Glendale was authorized to operate at Mount Lukens in LA County, California under WNHN211, and at Santiago Peak in Orange County and Mount Lukens in LA County under WNGQ365. LAPD is authorized under KGE571 to operate on several frequencies at San Pedro Hill, San Vincente, and Mount Lukens in LA County.

<sup>8</sup> *Branch Order*, 17 FCC Rcd at 22190, ¶ 4. According to GEI, Mr. Kohli involuntarily withdrew from his business affairs because of a serious illness in November 1994, leaving his businesses, including Glendale, in the hands of its employees. *Id.* (citing First Petition at Ex.1).

<sup>9</sup> *Id.* at 22190, ¶ 4 (citing Letter from Russell H. Fox, Counsel for Lone Star Radio, Inc. to Secretary, FCC at 1-2 (Dec. 1, 2000) (Lone Star December 1 Letter)).

<sup>10</sup> *Branch Order*, 17 FCC Rcd at 22190, ¶ 4. According to Lone Star, the assignment application from Glendale to Matson for Station WNGQ365 was filed, but never processed. Henry Matson, in a declaration, stated that the file number for the assignment application of Station WNGQ365 was FCC File No. 501400. *Id.* at n.10. Our records show that File Number 501400 was Lone Star's attempt to take assignment of the license for Station WZN649, which, at the time of the application, was authorized to operate on frequency 853.5375 MHz. The Licensing Branch found technical problems with the assignment application for Station WZN649, and returned it to Lone Star. Our records do not reflect that the application was ever resubmitted.

<sup>11</sup> *Id.* (citing Lone Star December 1 Letter at 2).

<sup>12</sup> *Id.* at 22190, ¶ 5 (citing Letter of Conservatorship from John A. Clarke, Clerk, to Ronald Gold, Gold & Murphy, Attorney for Frumeh Labow (July 16, 1997)).

<sup>13</sup> *Id.* (citing First Petition at 7).

<sup>14</sup> *Id.* (citing First Petition at 7-8).

<sup>15</sup> *Id.* (citing First Petition at 8 and Ex.1 Attachment A).

5. On February 4, 2000, while Glendale's assignment application was pending and after learning that the authorization for WNGQ365 had been renewed, Lone Star submitted a copy of an FCC Form 405A allegedly signed almost six years earlier by Harry Kohli on September 2, 1994, requesting cancellation of the station license for WNGQ365.<sup>16</sup> According to Lone Star, the cancellation notice was part of the 1994 Agreement between Lone Star and Glendale, but having elected to let the license expire, Lone Star had not submitted the September 2, 1994 cancellation notice to the Commission.<sup>17</sup> The Licensing Branch cancelled the license for WNGQ365 on March 28, 2000, on the basis of the cancellation notice, even though the notice was submitted by a third party, not the licensee. On April 7, 2000, the Licensing Branch informed Tjarks of the cancellation and on April 14, 2000, Tjarks wrote a letter to Commission staff asserting that neither he, nor Kohli, nor Glendale had submitted the cancellation notice.<sup>18</sup> The Licensing Branch subsequently reinstated the station license on June 15, 2000,<sup>19</sup> and granted the assignment of WNGQ365 to GEI on June 29, 2000.

6. On December 1, 2000, Lone Star filed a letter seeking cancellation of the license for WNGQ365, arguing that the station had not been in operation since November 1, 1995.<sup>20</sup> On February 9, 2001, the LAPD filed a letter in support of Lone Star's December 1 Letter.<sup>21</sup> Both parties argued that the station had permanently discontinued operations and, as a result, the license had cancelled automatically. Based on the information provided in the letters, the Licensing Branch issued a letter on March 7, 2001, explaining that the license for WNGQ365 had automatically cancelled pursuant to Section 90.157 of the Commission's rules. Section 90.157 provides that a license cancels automatically upon a station's permanent discontinuance of operations, and any station that has not operated for one year or more is considered to have been permanently discontinued.<sup>22</sup>

7. GEI filed a petition on April 6, 2001, seeking reconsideration of the automatic license cancellation.<sup>23</sup> The Branch issued its decision on November 5, 2002, finding that Station WNGQ365 had discontinued operations from November 1995, to at least May 1998, and as a result, the license automatically cancelled pursuant to Section 90.157 of the Commission's rules.<sup>24</sup> On December 5, 2002, GEI filed its Application for Review, reiterating arguments from its First Petition. The Commission

<sup>16</sup> *Id.* at 22191, ¶ 6 (citing Lone Star December 1 Letter at 2 and Ex.2).

<sup>17</sup> *Id.* (citing Lone Star 308(b) Reply at 6).

<sup>18</sup> *Id.* (citing Letter from A. Verne Tjarks, Glendale Electronics, Inc. to FCC, Gettysburg, Pennsylvania (Apr. 14, 2000)).

<sup>19</sup> *Id.* (citing Letter from Terry L. Fishel, Deputy Chief, Licensing and Technical Analysis Branch, Commercial Wireless Division to A. Verne Tjarks, Glendale Electronics, Inc. (June 15, 2000)).

<sup>20</sup> *Id.* at 22191, ¶ 7 (citing Lone Star December 1 Letter at 2-3).

<sup>21</sup> *Id.* (citing LAPD February 9 Letter at 1-2).

<sup>22</sup> 47 C.F.R. § 90.157.

<sup>23</sup> On June 19, 2002, the Branch issued a letter under Section 308(b) of the Communications Act, as amended, 47 U.S.C. § 308(b), seeking additional information from GEI on whether operations for Station WNGQ365 had been permanently discontinued. *Branch Order*, 17 FCC Rcd at 22191-92, ¶ 8 (citing Letter from Paul D'Ari, Chief, Policy and Rules Branch, Commercial Wireless Division to John J. McVeigh, Counsel for GEI (June 19, 2002)). GEI filed its response on August 23, 2002, and Lone Star filed a reply on September 6, 2002.

<sup>24</sup> *Branch Order*, 17 FCC Rcd at 22192, ¶ 9. In relevant part, the *Branch Order* rejected as irrelevant to the determination that the station had permanently discontinued operations under Commission rules, GEI's argument that any attempted transfer of its license for Station WNGQ365 was fraudulent, and as a result the license should be reinstated; rejected GEI's argument that the automatic cancellation of its license deprived GEI of its statutory right to a hearing under Section 312(c) of the Communications Act of 1934, as amended; and denied GEI's request for waiver based on humanitarian grounds because depriving the Kohli Trust of the license would diminish its worth substantially. *Id.* at 22193-95, ¶¶ 10-13.

denied the Application for Review also finding that Station WNGQ365 was non-operational for one year or more, from November 1995, to at least May 1998, and, as a result, the license for Station WNGQ365 automatically cancelled pursuant to Section 90.157 of its rules.<sup>25</sup> The Commission further rejected GEI's argument that the Commission cannot revoke its license for the permanent discontinuation of operations without being afforded a hearing under Section 312 of the Communications Act, as amended.<sup>26</sup> The Commission viewed that argument ultimately as a direct challenge to its authority to impose on the license for Station WNGQ365 the condition set forth in Section 90.157.<sup>27</sup> The Commission further explained that a license that cancels for failure to satisfy a license condition is not revoked and does not trigger a hearing requirement.<sup>28</sup> The Commission also rejected GEI's contention that the cancellation notice and documents relating to the attempted assignment of Station WNGQ365 to Lone Star were fraudulent and, therefore, required reinstatement of GEI's license for Station WNGQ365. Specifically, the Commission found that GEI's allegations of fraud in relation to the cancellation notice or assignment were not relevant to the Commission's determination that the license for Station WNGQ365 cancelled automatically when the station's operations were permanently discontinued.<sup>29</sup> Finally, the Commission

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<sup>25</sup> *Commission Order*, 19 FCC Rcd at 2542-43, ¶ 8.

<sup>26</sup> 47 U.S.C. § 312.

<sup>27</sup> *Commission Order*, 19 FCC Rcd at 2543, ¶ 9. The Commission explained that its authority to impose license conditions is firmly grounded in statutory law. Section 301 of the Communications Act, as amended, provides “[i]t is the purpose of this Act . . . to provide for the use of such channels, but not ownership thereof . . . under licenses granted by [the Commission], and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license.” *Id.* (citing 47 U.S.C. § 301; *see id.* § 303(r) (authorizing the Commission to “[m]ake such rules and regulations and prescribe restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act”)).

<sup>28</sup> *Commission Order*, 19 FCC Rcd at 2544, ¶ 10. Citing *P&R Temmer v. FCC*, 743 F.2d 918, 928 (D.C. Cir. 1984), the Commission explained that a Commission “licensee takes its license subject to the conditions imposed on its use. These conditions may be contained in both the Commission’s regulations and in the license. Acceptance of a license constitutes accession to all such conditions. A licensee may not accept the benefits of the license while rejecting the corresponding obligations.” *Id.*

The Commission also rejected GEI's reliance on Section 312(g) of the Act as erroneous. *Commission Order*, 19 FCC Rcd at 2544-45, ¶ 12. Section 312(g) provides for automatic cancellation of a broadcaster's license if its station fails to transmit a broadcast signal for any consecutive twelve-month period. *Id.* (citing 47 U.S.C. § 312(g)). The Commission explained that Congress added Section 312(g) to the Communications Act in 1996, to simplify the Commission's regulatory scheme in cases where broadcasters fail to transmit broadcast signals for a prolonged period of time. *Id.* GEI reasoned that because Congress did not include what GEI termed as “non-broadcast stations” within the scope of Section 312(g), the Act mandates a hearing under Section 312(c) for any loss of any “non-broadcast” license, including the license for Station WNGQ365. *Id.* The Commission disagreed, explaining that the elimination of the hearing requirement for one group of licenses under defined circumstances pursuant to Section 312(g) does not, by itself, circumscribe its authority to establish by rulemaking conditions on licenses with automatic cancellation provisions for other stations or for broadcast stations under other circumstances. *Id.*

<sup>29</sup> *Commission Order*, 19 FCC Rcd at 2545, ¶ 13. GEI faulted Commission staff for failing to take into account its argument that Mr. Kohli did not consent to the 1994 Agreement and that the signatures of Mr. Kohli on documents related to the assignment of the license for Station WNGQ365 and the cancellation notice were allegedly forged. *Id.* GEI argued that protection of the integrity of the Commission's processes, as well as case precedent, required further inquiry into these matters. *Id.* Finding that this argument was unpersuasive because Glendale never assigned the license for Station WNGQ365 to Lone Star, the Commission concluded that the integrity of its processes was not affected by the alleged fraud. *Id.* Moreover, the cancellation notice did not provide the basis for the Branch's finding that Station WNGQ365 permanently discontinued its operations. *Id.*

determined that GEI failed to present any basis on which it could grant GEI a waiver of Section 90.157.<sup>30</sup> GEI filed its Second Petition on March 10, 2004.<sup>31</sup>

### III. DISCUSSION

8. Initially, we deny GEI's request under Section 1.3 of the Commission's rules<sup>32</sup> for a waiver of the requirements in Section 1.106(b)(2), which provides that "where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present: (i) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or (ii) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity."<sup>33</sup> GEI's sole explanation for seeking the waiver, that the Petition "may clarify the record,"<sup>34</sup> provides no rationale at all for determining whether good cause exists for granting a waiver of Section 1.106(b)(2) of the Commission's rules.

9. We dismiss GEI's Second Petition as repetitious under Section 1.106(b)(2) of the Commission's rules because GEI fails to support its arguments with any new facts or changed circumstances, or facts unknown to GEI prior to filing its Application for Review. Rather, GEI reiterates legal arguments that the Commission considered and rejected in the *Commission Order*. GEI contends in its Second Petition that the Commission must investigate the attempted fraudulent conveyance of the license for Station WNGQ365, even though the assignment never took place, as well as the "underlying circumstances" that caused the station to discontinue operations for more than twelve months.<sup>35</sup> GEI suggests that the scheme involving Northrup and Matson may have been to process the assignment application for Station WNHN211<sup>36</sup> and to "lose" the assignment application for Station WNGQ365 to free-up frequency 853.8875 MHz so some other party, perhaps Lone Star, could start-up operations on frequency 853.8875 MHz without interference from WNGQ365. GEI suggests that some of the equipment taken from Station WNGQ365, when it was dismantled, may have even been used for these start-up operations.<sup>37</sup>

10. GEI argues that the assignment of Station WNHN211 from Glendale to Lone Star and the dismantling of Station WNGQ365 are "fruit of the [same] poisonous tree," the allegedly illegal agreement between Northrup and Matson.<sup>38</sup> GEI concludes that because the Commission granted the assignment

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<sup>30</sup> *Commission Order*, 19 FCC Rcd at 2545-46, ¶ 14.

<sup>31</sup> Lone Star filed its Opposition on March 23, 2004. Opposition to Petition for Reconsideration, filed by Lone Star Radio, Inc. (Mar. 23, 2004).

<sup>32</sup> 47 C.F.R. § 1.3. Section 1.3 provides, in relevant part, that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." *Id.* In its Second Petition, GEI seeks waiver of Section 1.4 of the Commission's rules. Second Petition at 4. Section 1.4 addresses issues regarding the computation of time. We therefore believe GEI intended to reference Section 1.3 of the Commission's rules.

<sup>33</sup> 47 C.F.R. § 1.106(b)(2).

<sup>34</sup> Second Petition at 5. GEI's full statement is that "consideration of this Petition is warranted as such consideration may clarify the record and possibly moot the need for further appeal." *Id.*

<sup>35</sup> Second Petition at 6.

<sup>36</sup> GEI refers throughout its Second Petition to WHNN211. We believe it intends to reference Station WNHN211.

<sup>37</sup> Second Petition at 5-6.

<sup>38</sup> According to GEI, if the Commission does not investigate the "result of malfeasance by Northrup or Matson or both," "it is open season on licensees who have become incompetent and who have disloyal employees," and the

(continued....)

application for Station WNHN211, the Commission must investigate Northrup and Matson, the circumstances surrounding the 1994 Agreement, and all actions taken pursuant to that agreement.<sup>39</sup> GEI's reiteration of its argument that the dismantling of Station WNGQ365 was the result of a fraudulent agreement that requires reinstatement of the license for Station WNGQ365 does not rely on any new facts or changed circumstances as required under Commission rules.

11. In addition, GEI contends that the cancellation of the license for Station WNGQ365 violates Section 312(c) of the Communications Act, as amended. In this Second Petition, GEI casts its argument in terms that suggest the discontinued operations cannot be a violation of the condition on the license for Station WNGQ365 because the licensee, Mr. Kohli, did not knowingly discontinue operations. Rather, GEI suggests that Section 312(c) of the Communications Act applies because, according to GEI, third parties were responsible for the unauthorized deconstruction of the facilities and discontinued operations.<sup>40</sup> GEI further argues that the Commission's general rulemaking authority under Sections 301 and 303(r) of the Communications Act, as amended, "cannot eviscerate rights granted under § 312(c)."<sup>41</sup> Again, GEI's reiteration of its argument that the application of a condition on GEI's license that results in automatic cancellation requires a hearing under Section 312(c) of the Communications Act, as amended, does not rely on any new facts or changed circumstances as required under Commission rules. It is well-settled Commission policy that petitions for reconsideration will not be granted merely for the purpose of again debating matters on which the Commission has once deliberated and spoken. We therefore dismiss GEI's Second Petition as repetitious.<sup>42</sup>

12. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.331 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.3, the Request for Waiver filed by Glendale Electronics, Inc. on March 10, 2004, is DENIED.

13. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Sections 0.331 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.106, the Petition for Reconsideration filed by Glendale Electronics, Inc. on March 10, 2004, is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Cyndi Thomas  
Assistant Chief, Mobility Division  
Wireless Telecommunications Bureau

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Commission will become "an unwitting accomplice to conspiracies to highjack licensees' rights." Second Petition at 5-6.

<sup>39</sup> Second Petition at 7.

<sup>40</sup> Second Petition at 7-9.

<sup>41</sup> Second Petition at 9.

<sup>42</sup> 47 C.F.R. § 1.106(b). Section 1.106(b)(3) provides that "[a] petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious." *Id.* § 1.106(b)(3).